



Item No: 6.1

Date: 11 May 2021

Attachment: A

Meeting: Walkerville Oval Redevelopment Committee

Title: Project Funding, Building Design & Grant Implications

Responsible Manager: Chief Executive Officer, Kiki Cristol

Author: Manager Property, Contracts & Strategic Projects, Scott Reardon

Type of Report: **Decision Required**

Pursuant to Section 83(5) of the *Local Government Act 1999*, the Chief Executive Officer indicates that the matter contained in this report may, if the Walkerville Oval Redevelopment Committee so determines, be considered in confidence pursuant to Section 90(2) of the *Local Government Act 1999* on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(d) of the Act being information that could prejudice the commercial position of the person who supplied the information.

Recommendation (Public)

Pursuant to s90(3)(k)

Pursuant to section 90(2) of the *Local Government Act 1999* the Walkerville Oval Redevelopment Committee orders that all members of the public except Chief Executive Officer Kiki Cristol, Manager Property, Contracts and Strategic Projects Scott Reardon, and the Acting Council Secretariat be excluded from attendance at the meeting for Agenda Item 6.1 Project Funding, Building Design & Grant Implications.

The Walkerville Oval Redevelopment Committee is satisfied that pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information.

In addition, the Walkerville Oval Redevelopment Committee has further considered that the information provided would on balance be contrary to the public interest because the disclosure of his information may jeopardise the commercial dealings of the person that provided the information.

Recommendation (Confidential)

1. That the Walkerville Oval Redevelopment Committee receive and note the Project Funding, Building Design & Grant Implications report;
2. That the Walkerville Oval Redevelopment Committee advise Council:
 - a. about the possible amalgamation between the Walkerville Bowling & Community Club and the Payneham Bowling Club; and
 - b. that once amalgamated the <NAME> Bowling Club have indicated their intention to provide a contribution toward the Walkerville Oval Redevelopment totalling \$XXX subject to:

- i. the Bowling Club portion of the redevelopment being redesigned to accommodate the increase in Bowling Club members;
 - ii. a long-term lease of 42 years be entered into between the Town of Walkerville and the <NAME> Bowling Club;
 - iii. the reclamation of the C Green into the lease area;
3. That pursuant to the terms of the Local Government Infrastructure Partnership Program Grant Deed, Council then provide written advise of the aforementioned to the Treasurer, Hon. Rob Lucas MLC, and further request that the Treasurer support the proposed contribution of \$XXX being in addition to the already committed project amount of \$8.0M, as the additional funding will assist Council in providing additional facilities and space for the increased in Club membership for the new <NAME> Bowling Club, as well as delivering more improved facilities for the community.

Recommendation (Public)

Pursuant to s.91(7)

That having considered Agenda Item 6.1 Project Funding, Building Design & Grant Implications in confidence under section 90(2) and (3)(k) of the *Local Government Act 1999*, the Walkerville Oval Redevelopment Committee, pursuant to section 91(7) of that Act orders that the report, attachments and minutes relevant to this Agenda Item be retained in confidence for 12 months or until the matter has been finalised

and

That the Walkerville Oval Redevelopment Committee resolves to end its confidential deliberations pursuant to Section 90(2) of the *Local Government Act 1999* and re-admit the public.

Summary

The purpose of this report is to provide the Walkerville Oval Redevelopment Committee with further particulars regarding:

- the proposed amalgamation of the Walkerville Bowling & Community Club and the Payneham Bowling Club;
- the proposed <NAME> Bowling Club contribution toward the Walkerville Oval Redevelopment; and
- Council's obligations and the additional provisions contained within the draft Local Government Infrastructure Partnership Program Grant Deed which **may** impact the acceptance of any additional funding.

Background

At their Ordinary Meeting of 18 January 2021 the resolved in confidence:

WOR11/20/21

That the Committee note item 6.2 Project Funding and Governance Implications – verbal information report.

Walkerville Bowling & Community Club and Payneham Bowling Club - Proposed Amalgamation

Following the verbal report provided to the Walkerville Oval Redevelopment Committee at their meeting of 27 April 2021, on Thursday 6 May 2021, the Chief Executive Officer and Manager Property, Contracts & Strategic Project met with the Presidents of both the Walkerville Bowling & Community Club and Payneham Bowling Club. The Presidents provided an overview of the Clubs' intentions to amalgamate, with the Payneham Bowling Club selling the existing site and relocating to the Walkerville Bowling Club.

The Presidents also indicated their intention to provide a contribution toward the Walkerville Oval Redevelopment so as to ensure the facilities and useable space will be sufficient to accommodate the increased membership of the new <NAME> Bowling Club, as well as delivering improved facilities for the community.

Walkerville Bowling & Community Club

Membership currently

Payneham Bowling Club

Membership currently

Local Government Infrastructure Partnership Program

On 29 April 2021 all successful Local Government Infrastructure Partnership Program Grantees received a draft copy of the generic proforma Local Government Infrastructure Partnership Program Grant Deed (**Grant Deed**). Upon review, pursuant to terms and conditions of the Grant Deed, of specific relevance to the matter at hand is:

Clause 8 (Keep Informed)

8.12 *The Grantee must immediately inform the Treasurer of any significant changes to the nature and/or scope of the activities conducted by the Grantee which would impact on the Purpose, the Project or the other funding Grantee's ability to comply with its obligations under this Deed or the financial position of the Grantee.*

Clause 13 (Other Financial Assistance)

13.1 *The Grantee must give the Treasurer full details of any financial assistance for activities in connection with the Project which the Grantee expects or receives from another source or agency (be it government or otherwise) after the date of this Deed, including the amount and source of the funding, any relevant agreements and the name of the program under which it was provided, within thirty (30) days of receiving notice that the other financial assistance has been approved.*

13.2 *The Grantee acknowledges and agrees that the Grantee must contribute at least 50% of the Eligible Expenditure from its own funds. Own funds excludes any third party funding, being funding from the state Government of South Australia and/or non-Government funding, required to complete the Project.*

13.3 *The Treasurer may reduce the amount of the Grant to reflect the amount of the other financial assistance referred to in clause 13.1.*

Clauses 23 (Modification)

23. *No addition to or modification of any provision of this Deed will be binding upon the Parties unless agreed by the Parties in writing.*

Additionally, another noteworthy provision within the Grant Deed is:

Clause 12 (Publicity)

- 12.1 *The Grantee must not make any public announcements or media releases about this Deed or the Project without the prior written consent of the Treasurer.*
- 12.2 *The Grantee will acknowledge the Grant by the Treasurer in any advertising, publicity or promotional material relating to this Deed in the manner specified in Attachment 1.*
- 12.3 *The Grantee will participate in promotional or publicity activity in relation to this Deed as is reasonably required by the Treasurer.*

Attachments

Attachment A	Draft Local Government Infrastructure Partnership Program Grant Deed
--------------	--

RELEASED

DATED THE _____

DAY OF _____

2021

LOCAL GOVERNMENT INFRASTRUCTURE PARTNERSHIP PROGRAM

GRANT DEED

BETWEEN

THE TREASURER
("Treasurer")

-AND-

[**CHECK SA LEGISLATION WEBSITE FOR CORRECT COUNCIL NAMES]**
("Grantee")

[This agreement is a DRAFT provided only for the purposes of furthering negotiations between the parties. The State will not be legally bound unless and until an agreement is executed by the parties and any actions taken in anticipation of such formal execution is at the risk of the person taking them.]

**GRANT DEED
LOCAL GOVERNMENT INFRASTRUCTURE PARTNERSHIP PROGRAM**

DEED made on 2021

BETWEEN:

THE TREASURER OF SOUTH AUSTRALIA (“Treasurer”)

AND:

THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1 (“Grantee”)

IT IS AGREED

- A. The Local Government Infrastructure Partnership Program (“the Program”) has been established to support grantee’s spending on agreed infrastructure projects.
- B. The Grantee has applied for, and the Treasurer has agreed to provide, assistance in the form of a grant (“Grant”) to the Grantee for the Purpose.
- C. The Treasurer and Grantee agree that the Grant will be provided on the terms and conditions of this Deed.
- D. This Deed comprises this Execution Page, the Grant Details (Attachment 1), the Project Details (Attachment 2), the Additional Obligations (Attachment 3), the Payment Schedule (Attachment 4), the Standard Terms and Conditions (Attachment 5), the Acquittal Form (Attachment 6), Claim Notice (Attachment 7), and Reports (Attachment 8).

EXECUTED AS A DEED

THE COMMON SEAL of **THE TREASURER**)

was affixed in the presence of)

.....

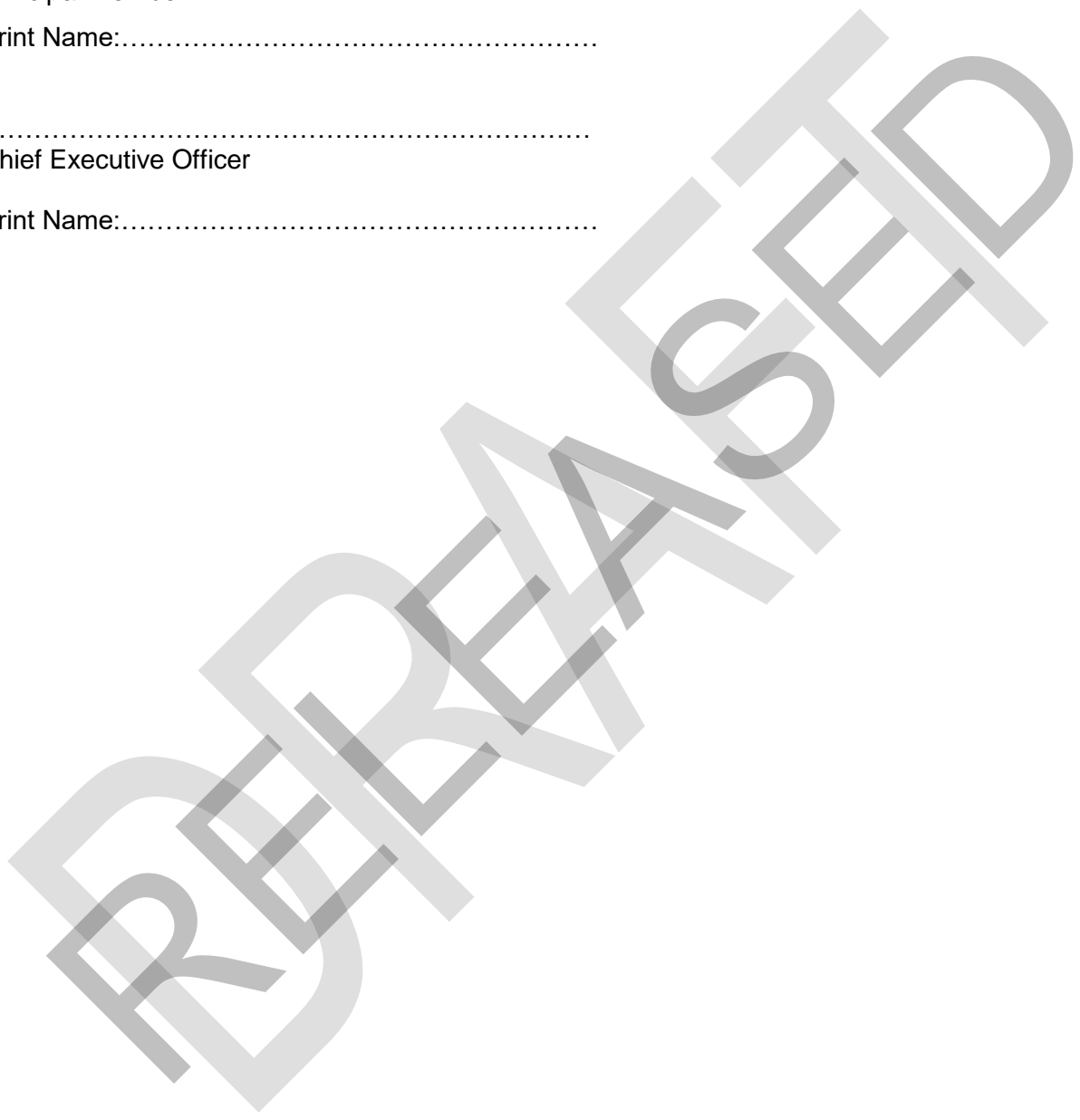
Witness

Print Name:.....

THE COMMON SEAL of [])
COUNCIL was hereunto affixed, in the)
presence of:)

.....
Principal Member
Print Name:.....

.....
Chief Executive Officer
Print Name:.....



Attachment 1 - Grant Details

Item 1	Treasurer	The Treasurer a body corporate pursuant to the <i>Administrative Arrangements Act, 1994 (SA)</i> State Administration Centre, 200 Victoria Square, Adelaide, SA, 5000
Item 2	Grantee	[GRANTEE NAME] [ADDRESS (Registered Office)] ABN []
Item 3	Grantee's Business	The operations and undertakings of the Grantee under the <i>Local Government Act 1999 (SA)</i>
Item 4	Project Commencement Date	[]
Item 5	Project Completion Date	[] or such later date approved in writing by the Treasurer
Item 6	Last Date to Claim	[] or such later date approved in writing by the Treasurer
Item 7	Expiry Date	[]
Item 8	Grant (GST exclusive)	The lesser of: <ul style="list-style-type: none"> • \$ [] (GST exclusive); and • 50% of Eligible Expenditure incurred in completing the Project.
Item 9	Eligibility Period	The period commencing on [date of grant approval] and ending on the Project Completion Date
Item 10	Conditions Precedent to Deed	The Grantee must provide: <ul style="list-style-type: none"> • evidence to the satisfaction of the Treasurer that the Grantee has sufficient Other Funding to complete the Project; • evidence to the satisfaction of the Treasurer that the Grantee has obtained all Authorisations and Approvals required for the Project; • copies of all Material Contracts; • a copy of the legally binding lease agreement between the Grantee and the owner of the Project Location, for a term ending not earlier than the Expiry Date; and • evidence to the satisfaction of the Treasurer that the registered proprietor of the Project Location consents to the Grantee undertaking the Project at the Project Location;
Item 11	Insurances	Insurance in respect of the whole of its assets and undertakings (including but not limited to the assets acquired by the Grantee with the Grant) with a reputable insurer, against all such risks as are usually insured against by persons and companies pursuing a business enterprise of the same or a similar nature, for the full replacement cost of those assets and undertakings.

Item 12	Authorised Representatives	<p>Treasurer: Director, Risk and Commercial Advisory, SAFA</p> <p>Grantee: []</p>
Item 13	Addresses for Notices	<p>Treasurer: South Australian Government Financing Authority Level 5, State Administration Centre, 200 Victoria Square Adelaide SA 5000 Email: SAFAIndustryAssistance@sa.gov.au</p> <p>or as otherwise notified in writing.</p> <p>Grantee: []</p>
Item 14	Form of Funding Acknowledgement	<p>During the Term, the Grantee must:</p> <ul style="list-style-type: none"> • if required by the Treasurer, display signage acknowledging the support of the Program in relation to the Project at a location or locations agreed by the Grantee and the Treasurer until the Expiry Date unless otherwise agreed by the Treasurer in writing; and • invite the Treasurer and the Minister for Planning and Local Government to attend any formal opening of the Project.

Attachment 2 - Project Details

Item 1	Project	The Project is [] to be constructed / installed at the Project Location [Project description]
Item 2	Project Location	[include address & CT]
Item 3	Material Contracts	<ul style="list-style-type: none"> • Memorandum of Lease in respect of the Project Location dated [dd/mm/yyyy], and any extension of that lease, for a term ending not earlier than the Expiry Date. • Any Approvals or Authorisations required for the Project. • Any building, construction, works and supply, including equipment supply, agreements necessary for the Project. • Any finance, grant, loan and security documents entered into by the Grantee in respect of Other Funding. • Any agreement between grantee and any other contributors to the Project.

Attachment 3 – Additional Obligations

[Not used]

RECEIVED

Attachment 4 – Payment Schedule

Date for Achievement	Performance Milestones	Amount of Payment (excluding GST)
[]	<p>Performance Milestone 1</p> <p>The Grantee must provide evidence to the Treasurer's satisfaction that:</p> <ul style="list-style-type: none"> the Grantee to provide evidence that construction commenced physically; and the Grantee has submitted a Claim Notice. 	Up to \$[]
[]	<p>Performance Milestone 2</p> <p>The Grantee must provide evidence to the Treasurer's satisfaction that:</p> <ul style="list-style-type: none"> [Tailored Project related milestone(s)] the Grantee has incurred Eligible Expenditure totalling at least twice the amount claimed under this Deed at the date of the Claim Notice; the Grantee has provided a Performance Milestone Report in accordance with Attachment 8; and the Grantee has submitted a Claim Notice. 	Up to \$[]
[]	<p>Performance Milestone 3</p> <p>The Grantee must provide evidence to the Treasurer's satisfaction that:</p> <ul style="list-style-type: none"> [Tailored Project related milestone(s)]; the Grantee has incurred aggregate Eligible Expenditure totalling at least twice the amount claimed under this Deed (in aggregate) at the date of the Claim Notice ; the Grantee has provided a Performance Milestone Report in accordance with Attachment 8; and the Grantee has submitted a Claim Notice. 	Up to \$ []
Last Date to Claim	<p>Performance Milestone 4</p> <p>The Grantee must provide evidence to the Treasurer's satisfaction that:</p> <ul style="list-style-type: none"> The Grantee has achieved completion of the Project on or before the Project Completion Date; the Grantee has incurred aggregate Eligible Expenditure totalling at least twice the amount claimed under this Deed (in aggregate) at the date of the Claim Notice; the Grantee has submitted a Claim Notice; and the Grantee has provided the Project Completion Report in accordance with Attachment 8. 	Up to \$ []
Total Grant Ex GST		Up to \$ [Grant total]

Attachment 5 - Standard Terms & Conditions

AGREED TERMS

1. THE TERM

The Term of this Deed commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier.

2. CONDITIONS PRECEDENT

The rights and obligations of the parties under this Deed, including the obligation of the Treasurer to provide the Grant or any part of the Grant, are subject to the Treasurer being satisfied that the conditions precedent specified in Attachment 1, if any, have been complied with to the Treasurer's satisfaction, unless expressly waived by the Treasurer in writing.

3. AUTHORISED REPRESENTATIVES

- 3.1 The Representatives named in Attachment 1 are authorised to act on behalf of the Parties and are responsible for overseeing the effective administration of the Deed. The Representatives have authority to:
- (a) exercise all of the powers and functions of the Party they represent under this Deed other than the power to amend this Deed; and
 - (b) bind the Party they represent under this Deed in relation to any matter arising out of or in connection with this Deed.
- 3.2 A notice served on a Representative is taken to be notice to the Party they represent.
- 3.3 A Party may vary or revoke an authorisation at will, and nothing in this clause 3 shall prevent a Party from exercising any of its rights and powers under this Deed.

4. PAYMENT OF GRANT

- 4.1 The Grantee may only make a claim for an instalment of the Grant for Eligible Expenditure incurred for the Project.
- 4.2 Unless expressly waived by the Treasurer in writing, the obligation of the Treasurer to provide the Grant, or any instalment of the Grant, is subject to the Treasurer:
- (a) receiving, in all things to the complete satisfaction of the Treasurer:
 - (i) a Claim Notice in the form prescribed in Attachment 7 on or before the Last Date to Claim;
 - (ii) all Reports due at the date of the Claim Notice; and
 - (iii) documentary evidence that the Grantee has sufficient Other Funding.
 - (b) being satisfied that:
 - (i) the Grantee has, in all respects, complied with the terms and conditions of this Deed;
 - (ii) the Grantee has achieved the relevant Performance Milestone by the date for its achievement specified in Attachment 4;
 - (iii) an Event of Default has not occurred or is not occurring;
 - (iv) an Insolvency Event has not occurred;
 - (v) the Grantee's representations and warranties in this Deed are true in all material respects, and not misleading, when made or repeated; and
 - (vi) the Grantee has satisfied or complied with such other requirements (if any) specified in Attachment 1.
- 4.3 If the Treasurer is not satisfied that one or more of the requirements of clause 4.2 have been satisfied then the Treasurer may, by way of written notice to the Grantee, terminate or suspend the Treasurer's

obligations to provide the Grant, or any other obligations under this Deed.

- 4.4 Payment of any instalment of the Grant will be made to the Grantee's bank account specified in a Claim Notice which must be to an ADI and in the name of the Grantee.
- 4.5 The Grantee must ensure that it can properly account for the Grant received under the Deed.

5. GST

- 5.1 The parties acknowledge that compliance with this Deed may give rise to a Taxable Supply and that any consideration or payment obligation in this deed, including the payment of the Grant, is exclusive of GST unless stated otherwise.
- 5.2 The Grantee represents that:
- (a) the ABN shown in Attachment 1 is the Grantee's ABN; and
 - (b) it is registered under the GST Act.
- 5.3 The Parties agree that this Deed satisfies the requirement for a written agreement specifying the supplies to which the Recipient Created Tax Invoice ("RCTI") relates.
- 5.4 The Treasurer will provide a RCTI and where relevant an Adjustment Note, to the Grantee within 30 days of the making, or determining of the value, of the Taxable Supply.
- 5.5 The Grantee must not issue a Tax Invoice in respect of a Taxable Supply or, where relevant, an Adjustment Note in respect of an Adjustment Event.
- 5.6 If an Adjustment Event arises in respect of a Taxable Supply under this Deed the Parties must do all things necessary to make sure that the Adjustment Event may be properly accounted for, including the issue of an Adjustment Note.

6. REPAYMENT OF UNALLOCATED FUNDS

- 6.1 If the Grantee has not expended all of the Grant for the Purpose by the Project Completion Date, it must notify the Treasurer of the unexpended amount and may submit a written request for retention or carryover of unexpended amounts specifying:
- (a) the amount to be retained or carried over; and
 - (b) the purpose for which the unexpended amount will be used.
- 6.2 The Treasurer may consider the Grantee's request and notify the Grantee in writing whether it:
- (a) agrees that the Grantee may retain or carry over all or part of the unexpended amount; or
 - (b) requires the Grantee to repay all or part of that amount as notified by the Treasurer to the Treasurer within 30 days of receipt of the notice from the Treasurer.

7. REPRESENTATIONS AND WARRANTIES

- 7.1 The Grantee represents and warrants to the Treasurer that:
- (a) it is duly incorporated, qualified and properly accredited to carry on the Business and Project;
 - (b) it has the power (without restriction or condition), Approvals and Authorisations to enter into this Deed and perform its obligations under this Deed and will continue to have the power to perform its obligations under this Deed;
 - (c) an Insolvency Event has not occurred and there are no threatened actions or proceedings before any court or other body which will or are likely to materially adversely affect the financial position of the Grantee or its ability to perform its obligations under this Deed;

- (d) there are no threatened actions or proceedings before any Court or other body which will or are likely to materially adversely affect the financial position of the Grantee, its ability to perform its obligations under this Deed or to undertake and complete the Project;
- (e) it is not in material default under any law, indenture, mortgage, trust deed, agreement or other instrument or arrangement by which it is bound;
- (f) this Deed constitutes legal, valid and binding obligations on the part of the Grantee which are enforceable against it in accordance with its terms;
- (g) it has or will have available, sufficient Other Funding to complete the Project;
- (h) all information provided by the Grantee in the Application and to the Treasurer in accordance with this Deed, is true and correct in all material respects at the time it was provided, and there are no material facts known to the Grantee relating to it which could or might affect the willingness of the Treasurer to enter into an agreement with the Grantee on terms similar to the terms of this Deed which have not been disclosed to the Treasurer; and
- (i) it does not have any interests or obligations that conflict with its interests or obligations under this Deed.
- 7.2 The Grantee acknowledges that the representations and warranties made in this clause 7 have induced the Treasurer to agree to provide the Grant to the Grantee.
- 7.3 The Grantee acknowledges that each of the above representations and warranties shall survive the execution of this Deed and the provision of the Grant under this Deed and will be correct and complied with in all material respects on the date of this Deed, the dates of any Claim Notices and the dates of payment of the Grant and thereafter are repeated by reference to the circumstances existing at the time of such repetition except that each reference to financial statements or accounts shall be construed as a reference to the then latest available financial statements or accounts.
- 8. OBLIGATIONS**
- 8.1 All obligations under this Deed will apply for the duration of the Term.
- 8.2 The Grantee must comply with the Additional Obligations (if any) specified in Attachment 3.
- Purpose**
- 8.3 The Grantee must use the Grant solely for the Purpose.
- Business**
- 8.4 The Grantee must, during the Term, carry on and maintain its Business in the State of South Australia.
- Project**
- 8.5 The Grantee must commence the Project by the Project Commencement Date unless otherwise agreed in writing by the Treasurer.
- 8.6 The Grantee must complete the Project by the Project Completion Date unless otherwise agreed in writing by the Treasurer.
- 8.7 The Grantee must achieve each Performance Milestone by the date for achievement of that Performance Milestone specified in Attachment 4.
- 8.8 If the Grantee becomes aware of the possibility of a delay, which may prevent the Grantee from complying with clauses 8.5, 8.6 or 8.7, the Grantee must promptly notify the Treasurer in writing of:
- (a) the detail and likely extent of the delay and the Grantee's proposed strategies to manage the consequences of the delay; and
- (b) any request for an extension of time where such a request is necessary and reasonable in the circumstances.
- 8.9 The Treasurer may in its absolute discretion, consent to a request for an extension of time provided that:
- (a) the Grantee uses its best endeavours to minimise the delay and recover lost time;
- (b) where requested by the Treasurer, the Grantee provides a plan indicating in detail the steps the Grantee proposes to take to minimise the impacts of the delay; and
- (c) the Grantee complies with such other conditions imposed as part of the Treasurer's consent.
- 8.10 The Grantee must comply with, and must undertake the Project in compliance with, all applicable laws, rules and regulations and orders of any governmental authority.
- Keep Informed**
- 8.11 The Grantee must immediately notify the Treasurer in writing if it defaults in fully performing, observing and fulfilling any provision of this Deed, there occurs an Insolvency Event or it becomes aware of any representation or warranty made, repeated or deemed to be made or repeated by the Grantee in this Deed proving to be untrue in any material respect.
- 8.12 The Grantee must immediately inform the Treasurer of any significant changes to the nature and/or scope of the activities conducted by the Grantee which would impact on the Purpose, the Project or the other funding Grantee's ability to comply with its obligations under this Deed or the financial position of the Grantee.
- Project Assets**
- 8.13 The Grantee must not Deal With any real or personal property in relation to which the Grant has been applied by the Grantee without the prior written consent of the Treasurer, which shall not be unreasonably withheld.
- 8.14 If at any time prior to the Expiry Date the Grantee Deals With any real or personal property in relation to which the Grant has been applied (referred to in this clause 8.14 as "**the Property**"):
- (a) the Treasurer may by notice in writing given to the Grantee demand that the Grantee pay to the Treasurer a monetary amount (not exceeding the amount of the Grant) which is equivalent to the monetary payment or value received by or to be paid to or for the benefit of the Grantee in connection with the assignment, transfer, conveyance, sale, disposal or removal of the Property; and
- (b) the Grantee must then pay to the Treasurer the amount demanded by the Treasurer within the time stipulated by the Treasurer for payment.
- 9. REPORTING AND RECORD KEEPING**
- 9.1 During the Term the Grantee must keep all records (including original receipts and invoices) relating to the conduct and management of the Project, and necessary to provide a complete, detailed, up-to-date and accurate record and explanation of:
- (a) progress of the Project;
- (b) the application of the Grant;
- (c) incurred Eligible Expenditure; and
- (d) Other Funding.
- 9.2 The Grantee must provide the Reports and other documents as specified in Attachment 8, and must attend meetings as reasonably required by the Treasurer.

10. FINANCIAL REPORTING AND AUDITING

- 10.1 On the date specified in Attachment 8, the Grantee must provide an Acquittal Form in relation to the expenditure of all funds under this Deed:
- (a) certifying that the Grant has been properly spent on the Purpose in accordance with the requirements of the Deed; and
 - (b) signed by the Grantee's Representative.
- 10.2 Not late than each 31 October during the Term, the Grantee will provide to the Treasurer a copy of its management accounts, annual reports, financial statements and any other documents relevant to its operations, prepared in accordance with the Australian Accounting Standards and signed by the Grantee's Chief Executive Officer and audited by a qualified independent auditor.
- 10.3 The Grantee agrees the Treasurer may direct that the financial accounts of the Grantee be audited at the Treasurer's cost, and the Treasurer may specify the minimum qualifications that must be held by the person appointed to conduct the audit.
- 10.4 If the audit discloses that the Grantee has applied the Grant for a purpose other than the Purpose then the Grantee will be required to reimburse the Treasurer the costs of the audit.

11. INSPECTION

The Grantee must allow any officer or person authorised by the Treasurer on the giving of reasonable notice, to enter the premises of and to inspect the operations of the Grantee (including equipment, premises, accounting records, documents and information) and interview the Grantee's employees, agents and contractors on matters pertaining to the Project or the operations and reporting obligations of the Grantee under this Deed.

12. PUBLICITY

- 12.1 The Grantee must not make any public announcements or media releases about this Deed or the Project without the prior written consent of the Treasurer.
- 12.2 The Grantee will acknowledge the Grant by the Treasurer in any advertising, publicity or promotional material relating to this Deed in the manner specified in Attachment 1.
- 12.3 The Grantee will participate in promotional or publicity activity in relation to this Deed as is reasonably required by the Treasurer.

13. OTHER FINANCIAL ASSISTANCE

- 13.1 The Grantee must give the Treasurer full details of any financial assistance for activities in connection with the Project which the Grantee expects or receives from another source or agency (be it government or otherwise) after the date of this Deed, including the amount and source of the funding, any relevant agreements and the name of the program under which it was provided, within thirty (30) days of receiving notice that the other financial assistance has been approved.
- 13.2 The Grantee acknowledges and agrees that the Grantee must contribute at least 50% of the Eligible Expenditure from its own funds. Own funds excludes any third party funding, being funding from the state Government of South Australia and/or non-Government funding, required to complete the Project.
- 13.3 The Treasurer may reduce the amount of the Grant to reflect the amount of the other financial assistance referred to in clause 13.1.

14. INSURANCE

- 14.1 The Grantee must effect and maintain the insurance specified in Attachment 1 during the Term.
- 14.2 The Grantee must apply any monies received for any claim against a policy of insurance required by this

Deed to be maintained, towards the repair or replacement of the property insured, unless the Treasurer approves otherwise.

15. DEFAULT AND TERMINATION

- 15.1 The following are Events of Default:
- (a) the Grantee breaches any of its obligations or undertakings under this Deed and has not rectified such breach within the time frame specified in a notice given in writing by the Treasurer to the Grantee requiring rectification of the breach;
 - (b) any representation or warranty made, repeated or deemed to be made or repeated by the Grantee in this Deed proves to be untrue in any material respect;
 - (c) an Insolvency Event occurs, or threatens to occur;
 - (d) if a secured party enforces its rights in relation to any asset of the Grantee;
 - (e) if there is a Material Adverse Effect in relation to a Material Contract or the condition or stability of the Grantee;
 - (f) if the Grantee determines to cease to complete the Project; or
 - (g) if the Other Funding is not available for any reason.
- 15.2 The Grantee undertakes that it will promptly inform the Treasurer in writing upon the Grantee becoming aware of, or when the Grantee ought reasonably to have become aware of, the happening of an Event of Default.
- 15.3 If an Event of Default occurs the Treasurer may, then notwithstanding any previous delay or waiver on the Treasurer's part, upon giving written notice to the Grantee:
- (a) require the Grantee to immediately pay the Repayment Amount to the Treasurer as liquidated damages upon demand by the Treasurer;
 - (b) withhold the portion of the Grant not already paid;
 - (c) withhold future funding from the Grantee; and/or
 - (d) terminate this Deed.
- 15.4 If pursuant to clause 15.3 the Treasurer requires the Grantee to pay the Repayment Amount to the Treasurer then the Grantee agrees to make such repayment in full within 14 days of receipt of a written demand from the Treasurer.
- 15.5 The Grantee acknowledges that:
- (a) the Treasurer has concluded that it is in the interests of the public of the State of South Australia that the Treasurer should provide the Grant to the Grantee but only upon the terms and conditions of this Deed;
 - (b) it is essential to the purpose for which the Grant is advanced pursuant to this Deed that:
 - (i) the Grantee uses the Grant for Eligible Expenditure incurred for the Project; and
 - (ii) the Grantee does not permit an Event of Default to occur;
 - (c) if an Event of Default occurs the extent of the loss or damage sustained by the Treasurer will be extremely difficult to assess or quantify accurately or to otherwise determine precisely;
 - (d) the Repayment Amount represents a genuine pre-estimate by the Treasurer of the compensation which the Treasurer believes is fair and reasonable; and
 - (e) any amounts payable to the Treasurer pursuant to this clause 15 are not and will not be construed or deemed to be a penalty payable by the Grantee for the purposes of any applicable legal rule or norm.
- 15.6 The Grantee enters into the obligation to pay the Repayment Amount with the intention that it is a

- legally binding, valid and enforceable contractual provision against the Grantee.
- 15.7 The Treasurer and the Grantee intend to exclude, to the extent permissible, the application and operation of any legal rule or norm, whether statutory or common law, relating to:
- the characterisation as penalties of liquidated amounts payable under a contract on a breach occurring; or
 - the enforceability or revocability of such liquidated amounts.
- 15.8 The Grantee's obligation to pay the Repayment Amount to the Treasurer shall not be subject to any set off or counterclaim by the Grantee and the Repayment Amount shall be paid by the Grantee to the Treasurer free and clear of any withholding of whatever nature.
- 15.9 Any amount due and payable by the Grantee to the Treasurer pursuant to:
- this Deed; or
 - any other agreement that the Grantee may have with the Crown;
- may be set off against any amount due and payable by the Treasurer to the Grantee under this Deed.
- 16. NOTICES**
- 16.1 Any notice, request, approval, consent or other communication to be given or served pursuant to this Deed must be in writing and addressed and signed as the case may be, as specified in Attachment 1.
- 16.2 A notice, request, approval, consent or other communication must be delivered by hand, sent by prepaid post or email, or transmitted by facsimile.
- 16.3 A notice, request, approval, consent or other communication will be deemed to be received:
- if delivered by hand, upon delivery;
 - if sent by pre-paid ordinary post within Australia, upon the expiration of seven (7) Business Days after the date on which it was sent;
 - if sent by email, on the Business Day on which it is sent if sent before 5:00pm on that Business Day and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, otherwise on the next Business Day.
- 17. CONTRACT DISCLOSURE**
- 17.1 The Treasurer may disclose this Deed and/or information in relation to this Deed in either printed or electronic form, and either generally to the public or to a particular person as a result of a specific request.
- 17.2 Nothing in this clause derogates from:
- the Grantee's obligations under any provisions of this Deed; or
 - the provisions of the *Freedom of Information Act 1991 (SA)*.
- 18. COMPLIANCE WITH LAWS AND POLICIES**
- 18.1 The Grantee must comply with the laws in force in the State of South Australia in performing its obligations under this Deed.
- 18.2 The Grantee must comply with any policies notified by the Treasurer in writing at the Commencement Date.
- 19. COSTS**
- 19.1 The Grantee must pay, on the basis of a full indemnity, any costs incurred by the Treasurer in enforcing the Treasurer's rights under this Deed.
- 19.2 Each Party will bear its own costs of and incidental to the negotiation, preparation and execution of this Deed.
- 20. GOVERNING LAW AND JURISDICTION**
- 20.1 This Deed is governed by the laws in the State of South Australia.
- 20.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Deed.
- 21. ENTIRE DEED**
- The Deed constitutes the entire Deed between the Parties in respect of the matters dealt with in this Deed and supersedes all prior Deeds, understanding and negotiations in respect of the matters dealt with in this Deed.
- 22. NO ASSIGNMENT**
- 22.1 The Grantee must not assign, encumber or otherwise transfer any of its rights or obligations under this Deed without the written consent of the Treasurer.
- 22.2 Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Deed is deemed to refer to the new entity succeeding or replacing the Treasurer and all of the Treasurer's rights and obligations under this Deed will continue and will become rights and obligations of that new entity.
- 23. MODIFICATION**
- No addition to or modification of any provision of this Deed will be binding upon the Parties unless agreed by the Parties in writing.
- 24. SEVERANCE & READING DOWN**
- 24.1 Each word, phrase, sentence, paragraph and clause of this Deed is severable.
- 24.2 Severance of any part of this Deed will not affect any other part of this Deed.
- 24.3 Where a word, phrase, sentence, paragraph, clause or other provision of this Deed would otherwise be unenforceable, illegal or void the effect of that provision shall so far as possible, be limited and read down so that it is not unenforceable, illegal or void.
- 24.4 If any provision of this Deed is, or becomes, defective, and the Treasurer consequently is unable to enforce any of the Grantee's obligations under this Deed, and the defect is capable of remedy, the Grantee must do all things and sign all documents which the Treasurer may reasonably require the Grantee to do or sign to remedy the defect.
- 25. COUNTERPARTS**
- This Deed may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email.
- 26. NO FURTHER OBLIGATION**
- 26.1 The Grantee acknowledges that the Grant represents a one-off contribution by the Treasurer towards the Project, and the Grantee agrees any request for subsequent funding will require a new application to the Treasurer. The Treasurer is under no obligation to agree to pay any subsequent funding to the Grantee.
- 26.2 The Grantee acknowledges the Treasurer will not be liable to reimburse the Grantee for any losses or cost over runs that may result from the operation of this Deed or the carrying out of the Purpose.
- 27. TIME OF THE ESSENCE**
- Time is of the essence in respect of any time, date or specified period either in this Deed or in any notice served under this Deed.
- 28. NO WAIVERS**
- 28.1 No waiver of any right under this Deed is effective unless given in writing and signed by the Party waiving its rights.

- 28.2 A waiver by either Party in respect of a breach of a provision of this Deed by the other Party is not a waiver in respect of any other breach of that or any other provision.
- 28.3 The failure of either Party to enforce at any time any of the provisions of this Deed must not be interpreted as a waiver of that provision.
- 28.4 The rights and remedies contained in this Deed are cumulative and not exclusive of any rights or remedies provided at law.
- 29. CONSENT**
If the Grantee requires the Treasurer's consent under this Deed, the Treasurer may in absolute discretion give or withhold consent (subject to any provision in this Deed to the contrary) and if giving consent, the Treasurer may impose any condition on that consent that he considers appropriate. The Treasurer's consent will not be effective unless it is in writing and signed.
- 30. INTERPRETATION**
In this Deed (unless the context requires otherwise):
- 30.1 a reference to any legislation includes:
- all legislation, regulations and other forms of statutory instrument issued under that legislation; and
 - any modification, consolidation, amendment, re-enactment or substitution of that legislation;
- 30.2 a word in the singular includes the plural and a word in the plural includes the singular;
- 30.3 where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- 30.4 a reference to a clause number is a reference to all its subclauses;
- 30.5 a reference to two or more persons is a reference to those persons jointly and severally;
- 30.6 a reference to dollars is to Australian dollars;
- 30.7 a reference to a Party includes that Party's administrators, successors and permitted assigns;
- 30.8 no provision or expression in this Deed is to be construed against a Party on the basis that the Party (or its advisers) was responsible for the drafting of this document;
- 30.9 a reference to legislation includes legislation repealing, replacing or amending that legislation;
- 30.10 mentioning anything after the words include, includes or including does not limit what else might be included; and
- 30.11 if any act pursuant to this Deed would otherwise be required to be done on a day which is not a Business Day, then that act may be done on the next Business Day.
- 31. DEFINITIONS**
In this Deed:
- 31.1 "**Acquittal Form**" means a notice of financial acquittal in the form specified in Attachment 6;
- 31.2 "**Additional Obligations**" means the obligations specified in Attachment 3;
- 31.3 "**ADI**" means a deposit taking institution authorised under the *Banking Act 1959 (Cth)* to carry on banking business in Australia;
- 31.4 "**Adjustment Event**" has the meaning attributed in the GST Law;
- 31.5 "**Adjustment Note**" has the meaning attributed in the GST Law;
- 31.6 "**Application**" means the application for financial assistance from the Program submitted by the Grantee in respect of which the Grant has been awarded;
- 31.7 "**Approval**" means any approval, authorisation, permit, permission, licence, consent, clearance, exemption, filing, registration or the like, which is required by law or required to be issued by or obtained from a government authority or any other person;
- 31.8 "**Authorisation**" means any corporate action, approval or the like which is required to be satisfied or obtained in order to authorise the Grantee to undertake the Project or to enter into, deliver and perform its obligations under the Deed;
- 31.9 "**Business**" means the business of the Grantee described in Attachment 1;
- 31.10 "**Business Day**" means any day which is not a Saturday, Sunday or a public holiday in Adelaide;
- 31.11 "**Claim Notice**" means a notice of claim and compliance in the form specified in Attachment 7;
- 31.12 "**Commencement Date**" means the date of this Deed;
- 31.13 "**Crown**" means the Crown in right of the State of South Australia;
- 31.14 "**Deal With**" means:
- sell, transfer, novate, assign, declare a trust over or otherwise dispose of or procure or effect the disposal of, any interest or right; or
 - effect a change in the beneficial interest or beneficial unit holding under a trust which has an interest or right.
- 31.15 "**Eligible Expenditure**" means expenditure associated with the Project, reasonably incurred and actually paid, during the Eligibility Period, by the Grantee (exclusive of GST) but does not include:
- amounts for which the Grantee is entitled to claim reimbursement or funding from the Government of South Australia pursuant to an arrangement other than this Deed;
 - amounts for which the Grantee is entitled to claim reimbursement or funding from the Government of Australia (Cth) pursuant to an arrangement other than this Deed;
 - amounts for which the Grantee is entitled to claim reimbursement or funding from other third party contributions (eg: sporting or community club) pursuant to an arrangement other than this Deed;
 - any amount incurred by the Grantee prior to the Eligibility Period;
 - any amount incurred by the Grantee in relation to the purchase of land, buildings or a business;
 - any amount incurred by the Grantee in respect of ongoing operating costs including wages and salaries, recruitment, training, mentoring and procurement fees, rent or other property costs, grant applications and administration costs;
 - any amounts incurred by the Grantee that are non-cash expenses according to generally accepted accounting principles such as depreciation, amortisation or opportunity costs;
 - any amount incurred by the Grantee in respect of feasibility studies, project masterplans or business cases;
 - any amount incurred by the Grantee in respect of marketing activities including websites, traditional and digital marketing, subscriptions or contract fees to third party marketing distributors and channel management providers; and

- (j) any other amounts that the Treasurer determines are the usual or direct requirement of business;
- 31.16 **"Eligibility Period"** means the period specified in Attachment 1;
- 31.17 **"Event of Default"** means the defaults specified in clause 15.1;
- 31.18 **"Expiry Date"** means the date specified in Attachment 1;
- 31.19 **"Financial Year"** means a year commencing on 1 July and ending on 30 June;
- 31.20 **"General Purpose Financial Statements"** has the same meaning as in the Australian Accounting Standards; **"Grant"** means the funds payable under this Deed specified in Attachment 1;
- 31.22 **"GST"** means the tax imposed by the GST Law;
- 31.23 **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999*;
- 31.24 **"GST Law"** has the meaning given to that expression in the GST Act;
- 31.25 **"Input Tax Credit"** has the meaning attributed in the GST Law;
- 31.26 **"Insolvency Event"** means:
- (a) the Grantee ceases to carry on the Business;
 - (b) the Grantee ceases to be a council under the *Local Government Act 1999 (SA)*;
 - (c) the Grantee is or states that it is unable to pay its debts when they fall due; or
 - (d) anything analogous to or of similar effect to anything described above occurs in respect of the Grantee;
- 31.27 **"Last Date to Claim"** means the date specified in Attachment 1;
- 31.28 **"Material Adverse Effect"** means any change that has had, or is reasonably likely to have, an effect that is or will be materially adverse to the ability of the Grantee to perform its obligations under this Deed;
- 31.29 **"Material Contracts"** means those documents listed in Attachment 2;
- 31.30 **"Other Funding"** means funding or other financing in addition to the Grant that must be secured by the Grantee to enable it to satisfactorily complete the Project;
- 31.31 **"Party"** means a party to this Deed;
- 31.32 **"Performance Milestones"** means the performance milestones specified in Attachment 4;
- 31.33 **"Prescribed Rate"** means a daily interest rate being the aggregate of 2% per annum and the rate percent per annum determined by the Treasurer to be that which expresses as a percentage per annum the cost to the Treasurer of funding, on a daily basis for the period of the default, any amount due and unpaid under this Deed;
- 31.34 **"Project"** means the project specified in Attachment 2;
- 31.35 **"Project Commencement Date"** means the date specified in Attachment 1;
- 31.36 **"Project Completion Date"** means the date specified in Attachment 1;
- 31.37 **"Project Location"** means the location of the Project specified in Attachment 2;
- 31.38 **"Purpose"** means the purpose of reimbursing itself for Eligible Expenditure in accordance with this Deed;
- 31.39 **"Repayment Amount"** means:
- (a) all amounts paid by the Treasurer to the Grantee under this Deed up to the Repayment Date; and
 - (b) interest at the Prescribed Rate calculated from the Repayment Date up to but excluding the day on which the Grantee repays the amount in full without deduction;
- 31.40 **"Repayment Date"** means the date of the Treasurer's demand given under clause 15.4;
- 31.41 **"Reports"** means those reports specified in Attachment 8;
- 31.42 **"Representatives"** means the persons occupying the positions for each Party specified in Attachment 1;
- 31.43 **"Taxable Supply"** has the meaning attributed in the GST Law;
- 31.44 **"Tax Invoice"** has the meaning attributed in the GST Law;
- 31.45 **"Term"** means the period commencing on the Commencement Date and continuing until the Expiry Date, unless terminated earlier;
- 31.46 **"Trust"** means the trust in relation to which the Grantee is trustee; and
- 31.47 **"Trust Deed"** means the trust deed that establishes the Trust.

Attachment 6 – Acquittal Form

NOTICE OF FINANCIAL ACQUITTAL**TO: SOUTH AUSTRALIAN GOVERNMENT FINANCING AUTHORITY**

Director, Risk & Commercial Advisory

FROM: _____*Grantee Name*

Contact Person for enquiries: _____

Address: _____

Contact Email: _____

Contact Phone: _____ Facsimile: _____

DETAILS OF GRANT**Grant Deed** *Grant Deed dated [] between the Treasurer and [] (“Grantee”)***Purpose of Grant** *Reimburse the costs incurred by the Grantee in respect of up to 50% of Eligible Expenditure for the Project.**The Project is the Grantee’s [] (“Project”).***Grant Monies and Application**

Grant Amount: \$ _____

Total Eligible Expenditure: \$ _____

Funds Remaining: \$ _____

Representations

The Grantee represents and warrants that:

1. the Grant was solely applied to the Purpose;
2. the Project was completed on or prior to the Project Completion Date (as defined in the Grant Deed); and
3. the Grantee complied, in all material respects, with its obligations under the Grant Deed.

Signed for and on behalf of the Grantee by the Grantee’s Authorised Representative:_____
*Signature***Print Name:**

Date: / /

Attachment 7 – Claim Notice

NOTICE OF CLAIM AND COMPLIANCE

To: **South Australian Government Financing Authority**
Level 5, 200 Victoria Square
Adelaide SA 5000

Attention: Director, Risk and Commercial Advisory

[Grantee] provides the Treasurer with a Notice of Claim and Compliance pursuant to the **Grant Deed** dated [] between the Treasurer and [Grantee] (Grant Deed). Unless the context otherwise requires, terms and conditions in the **Grant Deed** have the same meanings where used herein.

Claim

The [Grantee] advises that:

- (a) Performance Milestone [#] has been achieved;
- (b) the Grant instalment amount being claimed is \$[] (not to exceed the amount for the Performance Milestone achieved)
- (c) Eligible Expenditure related to the achievement of the Performance Milestone totals \$[]
- (d) the Grantee's bank account details are:
 - Account Name: []
 - BSB: []
 - Account Number: []
- (e) The Grantee has submitted all reports (if any) required on or before the submission of this Notice.

Attachments

The [Grantee] attaches the following documentary evidence of having incurred and paid the Eligible Expenditure:

- (a) [for example: invoices, receipts]

The [Grantee] attaches the following documentary evidence of having completed the relevant Performance Milestones:

- (a) []

Representations and Warranties

The [Grantee] represents and warrants as at the date of this Notice that:

- (a) the payment of the grant to be provided under the **Grant Deed** have/will be applied for the reimbursement of **Eligible Expenditure**;
- (b) no event which is, or with the giving of notice, the lapse of time or the making of any determination would be likely to become, an **Event of Default** has occurred or is continuing;
- (c) it is not in default of any of its remaining **Warranties or Representations** provided under the **Grant Deed** and they remain true as though made at the date of this certificate in respect of the facts and circumstances then subsisting;
- (d) all insurances required to be held pursuant to the **Grant Deed** have in fact been held and are presently in force;
- (e) Other Funding is comprised of:
 - a. [Other: \$ being []%

DATED the day of

SIGNED for and on behalf of [Grantee] by the **Grantee's Authorised Representative**

.....
 Name:

Title:

Attachment 8 – Reports

Report required	Date for Provision
<p>Performance Milestone Report containing:</p> <p>A brief report, to the satisfaction of the Treasurer, which details key expenditures, activities, use of local contractors and FTEs used during construction, and achievements associated with the satisfaction of each Performance Milestone. The report should also detail progress of the Project.</p>	Refer Attachment 4
<p>Project Completion Report containing:</p> <p>A brief report, to the satisfaction of the Treasurer, which:</p> <ul style="list-style-type: none"> • details key expenditures, activities, use of local contractors, FTEs used during construction, and achievements associated with the satisfaction of each Performance Milestone, and • confirms that the Grant and Other Funding were spent for the Purpose and in accordance with this Deed and that the Grantee has complied with this Deed; • reports on the Project as a whole and how Project outcomes (eg key achievements arising out of, or in connection with, the use of the Grant, the number of direct full time jobs created) have contributed to the Program's objectives. 	Refer Attachment 4
<p>Acquittal Form</p>	Within six (6) months of the Project Completion Date
<p>Other: Such other reports or information in respect of this Deed and the Grantee's performance, compliance with this Deed and laws, the application of the Grant, Other Funding, the Grantee's Business, the Project, and any other matters relevant to the Treasurer's grant of the Grant as the Treasurer may request.</p>	Within thirty (30) days of receiving a request for information from the Treasurer, any time prior to the Expiry Date